

ROY TREMAYNE

IBLA 80-259

Decided May 15, 1980

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring the Golden Eagle lode mining claim abandoned and void. I MC 45797.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

Regulation 43 CFR 3833.1-2(d) requires that each claim or site filed shall be accompanied by a \$5 service fee, which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner.

2. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment -- Mining Claims: Recordation

Where a mining claimant submits a copy of a notice of location to the BLM District Office at Burley, Idaho, for a claim located prior to Oct. 21, 1976, he has not complied with 43 CFR 3833.1-2(a), even though the material was submitted to the District Office before the expiration of the statutory deadline of Oct. 22, 1979, as the location notice has not been filed in the "proper BLM office," which is the BLM Idaho State Office, in Boise, as expressly provided by 43 CFR 3833.0-5(g) and 1821.2-1(d), and the mining claim is properly declared abandoned and void under 43 CFR 3833.4(a).

4. Notice: Generally -- Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

APPEARANCES: Roy Tremayne, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Roy Tremayne appeals from the decision of the Idaho State Office, Bureau of Land Management (BLM), dated December 7, 1979, which declared the Golden Eagle lode mining claim abandoned and void for failure to file, on or before October 22, 1979, a copy of the official record of notice or certificate of location of the claim, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2(a).

The record shows that on October 29, 1979, the Idaho State Office received a copy of the recorded notice of location for the Golden Glow lode mining claim, an affidavit of labor for the assessment year 1979 for the Golden Eagle claim, and a map showing the situs of the Golden Eagle claim, but no service fee of \$5 was submitted with these documents. The documents were returned, unrecorded, to Tremayne, who resubmitted them with his notice of appeal January 3, 1980. There is no evidence that payment of the service fee of \$5 has ever been tendered to BLM in connection with this attempted recordation.

Appellant alleges that he never received notice from BLM regarding the new rules concerning mining claims, but that he had tendered

his documents to the BLM District Office at Burley, Idaho, on October 22, 1979. At that time, he was instructed that the filing for recordation had to be made with the Idaho State Office, in Boise. He then mailed his recordation documents to the Idaho State Office, where they were received October 29, 1979. He argues that his filing of the documents in the Burley District Office on October 22, 1979, should be accepted as timely compliance.

[1] The applicable regulation, 43 CFR 3833.1-2(d), specifically provides: "Each claim or site filed shall be accompanied by a \$5 service fee which is not returnable. A notice or certificate of location will not be accepted if it is not accompanied by the service fee and will be returned to the owner." This is a mandatory requirement. Without payment of the service fee, there is no recordation. L. Leon Jennings, 47 IBLA 47 (1980); Joe B. Cashman, 43 IBLA 239 (1979).

[2] The pertinent regulations, 43 CFR 3833.1 and 3833.2, implement Section 314 of FLPMA, and provide as follows:

[§] 3833.1-2 Manner of recordation -- Federal lands.

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, on Federal lands * * * shall file (file shall mean being received and date stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. * * *

* * * * *

§ 3833.2-1 When filing required.

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Appellant did not file timely a copy of the official record of the notice or certificate of location for the Golden Eagle claim, as required by 43 CFR 3833.1-2, in the proper office of BLM, nor did he submit the required service fee of \$5 for the recordation. It was proper for BLM to declare the Golden Eagle claim abandoned and void.

[3] The "proper BLM Office" is defined in the regulations at 43 CFR 3833.0-5(g) as the BLM office having jurisdiction over the area in which the claim is located, as specified in 43 CFR 1821.2-1(d). The latter section states that the office having jurisdiction over lands located in Idaho is BLM's Idaho State Office, in Boise, Idaho. Thus, under 43 CFR 3833.1-2(a), appellant was required to "file" the information regarding his mining location in BLM's Idaho State Office, *i.e.*, to cause the documents and service fee to be received and date stamped there on or before October 22, 1979. The documents relating to the Golden Eagle claim were not received at the Idaho State Office until October 29, 1979, and then without the necessary service fee, so it must be held that they were not timely filed. C. F. Linn, 45 IBLA 156 (1980); Joe B. Cashman, *supra*.

[4] Appellant argues that he was not informed of the "new rules" by BLM. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Willene Minnier, 45 IBLA 1 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Frederick Fishman
Administrative Judge

